ARTICLE 1. GENERAL PROVISIONS

Rule 101. Scope.

101.025 Although the Arizona Legislature is permitted to enact statutory rules that are reasonable and workable and that supplement the rules promulgated by the Arizona Supreme Court, when a conflict arises, or a statutory rule tends to engulf a rule that the court has promulgated, the court rule will prevail.

Lear v. Fields, ___ Ariz. ___, 245 P.3d 911, ¶¶ 14–22 (Ct. App. 2011) (A.R.S. § 12–2203 does not alter any substantive law, but instead is attempt to control admissibility of expert witness testimony in all cases and as such controls procedural matters; because it conflicts with existing rules of evidence, it is unconstitutional).

Rule 103(a). Rulings on Evidence — Effect of erroneous ruling.

103.a.050 An objection at trial for one reason or purpose does not preserve for appeal a claim of error based on a different reason or purpose.

State v. Womble, 225 Ariz. 91, 235 P.3d 244, ¶¶ 10–13 (2010) (detective testified that jail informant told him about defendant and that he used that information to get court order to listen to telephone calls; although defendant objected on basis of hearsay, because defendant did not object on basis of Confrontation Clause violation, court reviewed for fundamental error only; because detective testified only about defendant's existence and not about substance of what informant said, testimony did not violate Confrontation Clause).

State v. Kinney, 225 Ariz. 550, 241 P.3d 914, ¶ 7 (Ct. App. 2010) (objection at trial that probative value of defendant's statement to police was substantially outweighed by danger of unfair prejudice did not preserve for appeal contention that police obtained statement in violation of defendant's constitutional rights).

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶ 8 (Ct. App. 2010) ("hearsay" objection did not preserve for appellate review claim that admission of out-of-court text message violated Sixth Amendment right of confrontation).

103.a.060 Objection of "no foundation" is insufficient to preserve the issue; the objecting party must indicate how the foundation is lacking so that the party offering the evidence can overcome the shortcoming, if possible.

State v. Rodriguez, 186 Ariz. 240, 250, 921 P.2d 643, 653 (1996) (defendant objected to improper foundation for admission of earring; because defendant did not identify what foundation was lacking, trial court did not abuse discretion in admitting exhibit).

State v. Guerrero, 173 Ariz. 169, 171, 840 P.2d 1034, 1036 (Ct. App. 1992) (defendant contended on appeal state failed to provide specifics about times, dates, places, or quantities of prior acts; court held that claim of insufficient foundation may not be raised on appeal unless appellant specifically points out to trial court alleged defects in foundation so that opponent may cure any defects).

Packard v. Reidhead, 22 Ariz. App. 420, 423, 528 P.2d 171, 174 (1974) (court noted that appellee laid tenuous foundation for admission of traffic signal installation report, but held appellant's "no foundation" objection was inadequate to preserve issue for review on appeal; purpose of rule is to enable adversary to obviate objection if possible and to permit trial court to make intelligent ruling).

103.a.090 To preserve for appeal the question of exclusion of evidence, a party must make a **specific and timely objection,** and must make an offer of proof showing that the excluded evidence would be admissible and relevant, unless either the substance of the evidence is apparent from the context of the record, or the trial court excludes the evidence on substantive rather than evidentiary grounds.

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 32–36 (2010) (after testimony of state's mental health expert, juror submitted question asking whether it was likely defendant could be significantly reformed with help of medications or therapy; trial court did not submit question stating that "doesn't seem to fall within the realm of what mitigation is about"; court held defendant's potential for rehabilitation was mitigating circumstance, therefore trial court incorrectly concluded it was not, but held no reversible error because expert did not diagnose defendant for treatment nor was his expertise on effects of medication or therapy established, but more importantly, defendant made no offer of proof of what expert would have said if allowed to answer question).

103.a.190 "Invited error" occurs when a party asks a certain question, or asks the trial court to take some action, or specifically does not object to certain evidence, that results in otherwise inadmissible evidence being introduced; in such a case, a party may not object on appeal to an error the party itself created or invited.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶¶ 24–25 (Ct. App. 2010) (detective testified defendant's computer contained thousands of photographic images; on cross-examination, defendant's attorney asked detective if "around 17,500" photographs of naked women had been found on hard drive; because defendant first introduced pornographic nature of photographs, defendant invited any error).

Rule 103(b). Rulings on Evidence — Record of offer and ruling.

103.b.025 Although the Arizona Supreme Court has disapproved of the practice of holding unrecorded bench conferences, it has never required the verbatim reporting of all bench conferences, thus it is permissible for the trial court to follow a procedure as long as it makes a sufficient appellate record.

State v. Hargrave, 225 Ariz. 1, 234 P.3d 569, ¶¶ 57–61 (2010) (trial court did not have bench conferences recorded, but instead allowed counsel to make record out of presence of jurors and obtained counsel's assent that trial court had accurately described discussions).

Rule 105. Limited Admissibility.

105.030 The language of Rule 105 is mandatory, not discretionary; if the trial court admits evidence for one purpose but not for another, it may not refuse to give a limiting instruction.

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163, ¶¶ 25–27 (2010) (court held defendant's submission of inadequate instruction did not waive defendant's right to limiting instruction, but because evidence was not admitted simply to support expert's opinion, limiting instruction was not required).

ARTICLE 2. JUDICIAL NOTICE

Rule 201(b). Judicial Notice of Adjudicative Facts — Kinds of facts.

201.b.005 In order for a court to take judicial notice of a fact, the fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

State v. Wadsworth, 109 Ariz. 59, 63, 505 P.2d 230, 234 (1973) (appellate court took judicial notice of fact that marijuana is one of most widely used drugs among our young).

Simon v. Maricopa Medical Center, 225 Ariz. 55, 234 P.3d 623, ¶ 14 (Ct. App. 2010) (issue was whether City of Phoenix received service of complaint and where complaint was served; court took judicial notice that 200 W. Washington is Phoenix City Hall and the 15th floor is office of Clerk of City of Phoenix).

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶ 12 & n.3 (Ct. App. 2010) (defendant was charged with killing girlfriend (C.); shortly before shooting, C's friend B. received text message from C's cell phone that said, "Can you come over; me and Marcus [defendant] are fighting and I have no gas"; defendant contended text message was "testimonial"; court stated text message could be testimonial or non-testimonial, depending on circumstances and purpose for which it was made; defendant contended creating text message is necessarily slow and deliberate act; court took judicial notice of "common experience" that some persons are able to "text" at rapid fire pace).

ARTICLE 3. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

344. Judicial officers.

344.035 A trial judge is presumed to be free of bias or prejudice; the bias and prejudice necessary for disqualification must arise from an extra-judicial source and not from what the judge has done in participating in the case.

Simon v. Maricopa Medical Center, 225 Ariz. 55, 234 P.3d 623, ¶¶ 29–30 (Ct. App. 2010) (*pro se* plaintiff contended trial judge's consistent pattern of adverse rulings demonstrated bias and justified reversal; because plaintiff alleged no facts other that judge's rulings, plaintiff failed to demonstrate judicial bias).

348. Jurors.

348.010 Jurors are presumed to follow the trial court's instructions.

State v. Kuhs, 223 Ariz. 376, 224 P.3d 192, ¶¶ 51–55 (2010) (during guilt and aggravation phases, trial court instructed jurors not to be influenced by sympathy; during penalty phase, trial court instructed jurors not to be swayed by sympathy not related to evidence presented during penalty phase; on appeal, defendant contended trial court erred because jurors may have relied on guilt and aggravation phase instruction during penalty phase; because defendant did not object at trial, court reviewed for fundamental error only, and because jurors were presumed to follow instructions, found no error).

380. Property — Community.

380.030 When one spouse pays for real property from separate funds but takes title in the names of both spouses, or when a spouse places separate property in joint tenancy with the other spouse, the law presumes that the paying spouse intended to make a gift to the marital community, and the presumption can be overcome only by clear and convincing evidence.

In re Marriage of Inboden, 223 Ariz. 542, 225 P.3d 599, ¶¶ 2–10 (Ct. App. 2010) (after marriage, husband and wife executed deed transferring property from themselves as separate persons to themselves as married persons as joint tenants with rights of survivorship; court acknowledged property was community property, but stated gifts merely represented equitable rights to jointly held property and did not constitute irrevocable gifts of one-half interest, and that property was subject to equitable division).

In re Marriage of Flower, 223 Ariz. 531, 225 P.3d 588, ¶¶ 15–18 (Ct. App. 2010) (after marriage, husband deeded separate property to himself and wife as community property with right of survivorship; court acknowledged property was community property, but stated gifts merely represented equitable rights to jointly held property and did not constitute irrevokable gifts of one-half interest, and that property was subject to equitable division).

ARTICLE 4. RELEVANCY AND ITS LIMITS

Rule 401. Definition of "Relevant Evidence"—Criminal Cases

401.cr.120 In determining whether to admit evidence that another person may have committed the crime, the trial court must assess the effect this evidence would have on the defendant's culpability; if evidence shows that another person had the motive and opportunity to commit the crime, this would tend to create a reasonable doubt about the defendant's guilt, which would make the evidence relevant and the trial court should admit it.

State v. Machado, 224 Ariz. 343, 230 P.3d 1158, ¶¶ 25–56 (Ct. App. 2010) (court concluded **trial court erred in excluding** following evidence: (1) some time within 9 months prior to victim's murder, J. kidnapped his girlfriend and her sister by pointing older looking revolver at them; (2) 1 year after victim's murder J. was charged with aggravated assault for "road rage" incident when he pointed revolver at another driver and passenger; (3) 5 years after victim's murder J. was convicted of assault for pointing gun at woman, threatening to kill her with it, and telling her he had killed before; (4) almost 1 month after victim's murder, victim's mother received anonymous telephone call from person saying he did not mean to kill victim; (5) J's general access to weapons; (6) letter J. sent to girlfriend referring to victim and expressing desire to avenge her death; (7) girlfriend's testimony that J. talked about victim and referred to her as his "angel"; (8) that police investigated and obtained search warrant for J.; court concluded **trial court did not err in excluding** following evidence: (1) several other incidents reported by succession of J's girlfriends that J. had been threatening, violent, and abusive within several years of victim's murder, including holding knife to one girlfriend's neck; (2) J's school assignment wherein J. described the "perfect murder"; (3) J's drug and alcohol use; (4) J's parents' concerns about J's mental health; (5) contents and accompanying affidavit for search warrant for J.), *aff'd,* ___ Ariz. ___, ___ P.3d ____ (Feb. 16, 2011).

401.cr.123 In determining whether to admit evidence that another person may have committed the crime, the trial court should not analyze the admissibility of the evidence under Rule 404(b).

State v. Machado, ___ Ariz. ___, ___ P.3d ____, ¶¶ 10–16 (2011) (court followed reasoning from federal courts and other state courts).

401.cr.270 Evidence of prior sexual conduct between the victim and persons other than the defendant is generally not admissible.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶¶ 29–33 (Ct. App. 2010) (defendant was charged with committing sexual acts on 14-year-old step-daughter; court held trial court did not abuse discretion in precluding evidence that victim had consensual sexual relationship with female friend and had sexual intercourse with boyfriend).

401.cr.350 A photograph is admissible if relevant to an expressly or impliedly contested issue.

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 15–17 (2010) (trial court admitted autopsy photographs of victim who had been dead for 4 days; although photographs showed skin slippage and discoloration, each photograph conveyed highly relevant evidence about crime: cause and manner of victim's death and her body's state of decomposition, and medical examiner used them to explain injuries and assist jurors in understanding his testimony; court held trial court did not abuse discretion in admitting photographs after expressly finding their probative value was not substantially outweighed by any prejudicial effect).

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 21–22 (2010) (defendant was charged with first-degree murder and child abuse as result of death of his girlfriend's daughter; defendant contended trial court erred in admitting autopsy photographs showing various internal injuries; court held photographs were relevant to prove cause of death and extent of abuse and to rebut defendant's argument that victim seemed fine after he beat her and his suggestion she died because of lack of prompt medical care).

State v. Lynch, 225 Ariz. 27, 234 P.3d 595, ¶¶ 29–31 (2010) (photographs depicted blood spatter and blood pools in relation to victim's body, and thus corroborated opinion of state's expert that person who slit victim's throat stood behind him).

State v. Lynch, 225 Ariz. 27, 234 P.3d 595, ¶¶ 51–53 (2010) (during aggravation phase, trial court admitted three autopsy photographs depicting close-ups of victim's neck wounds (cut jugular vein; completely severed carotid artery; victim's torso covered in dried blood and head tilted back exposing severed larynx); court held these were properly admitted to illustrate testimony of medical examiner).

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.

402.017 If a contract contains a written expression of the parties' intent that the contract represents a complete and final agreement between them (integration clause), then parol evidence rule renders inadmissible any evidence of any prior or contemporaneous oral understandings and any prior written understandings that would contradict, vary, or add to the written contract.

Aztar Corp. v. U.S. Fire Ins. Co., 223 Ariz. 463, 224 P.3d 960, ¶¶ 49–52 (Ct. App. 2010) (in 2002, plaintiff began construction on building expansion; on October 30, 2003, six floors of expansion collapsed, causing 7-month delay in utilizing expansion; contract provided expansion would be endorsed onto insurance policy effective April 1, 2004; plaintiff contended expansion was covered property throughout construction and that April 1, 2004, date referred to date when estimated value of expansion would be added to policy; plaintiff argued extrinsic evidence showed it purchased coverage for loss caused by expansion, specifically deposition testimony that risk manager and insurance broker intended expansion to be covered under policy; court held language of policy was clear: The expansion would be endorsed onto the policy (and consequently become covered property) on April 1, 2004, which meant it was not covered property before April 1, 2004, thus parol evidence rule barred admission of extrinsic evidence that would vary or contradict terms of written contract).

402.075 Although the Arizona Legislature is permitted to enact statutory rules that are reasonable and workable and that supplement the rules promulgated by the Arizona Supreme Court, when a conflict arises, or a statutory rule tends to engulf a rule that the court has promulgated, the court rule will prevail.

Lear v. Fields, ___ Ariz. ___, 245 P.3d 911, ¶¶ 14–22 (Ct. App. 2011) (A.R.S. § 12–2203 does not alter any substantive law, but instead is attempt to control admissibility of expert witness testimony in all cases and such controls procedural matters; because it conflicts with existing rules of evidence, it is unconstitutional).

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time—Criminal Cases.

403.cr.010 If evidence is relevant and therefore admissible, a trial court may not exclude that evidence unless the opposing party establishes that the evidence poses the danger of *unfair* prejudice, and establishes that the *unfair* prejudice *substantially* outweighs the probative value.

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶ 20 (2010) (defendant was charged with first-degree murder and child abuse as result of death of his girlfriend's daughter; defendant contended trial court erred in admitting following evidence: (1) 3 months prior, he had violently shaken victim; (2) 2 months prior, he had bruised victim's face and buttocks; (3) 1 month prior, he had bruised victim's face; (4) weeks prior, he had bruised victim's arms; court held evidence was relevant to rebut defendant's claim that he did not intend to hurt victim and hit her as "reflex" as well as his contention that girlfriend could have caused injuries, and held that, in light of defendant's defenses, probative value was not substantially outweighed by prejudicial effect because these other acts occurred shortly before fatal attack, and trial court gave appropriate limiting instruction).

403.cr.030 Because evidence that is relevant will generally be adverse to the opposing party, use of the word "prejudicial" to describe this type of evidence is incorrect and cannot be the basis for excluding evidence under this rule; evidence is "*unfairly* prejudicial" only if it has an undue tendency to suggest a decision on an improper basis, such as emotion, sympathy, or horror.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶ 23 (Ct. App. 2010) (defendant was charged with four counts of committing sexual acts on step-daughter in Tucson between her 14th and 15th birthdays; trial court admitted evidence that defendant had committed sexual acts on victim in Yuma when she was 13; because jurors acquitted defendant of two of six counts, that indicated guilty verdicts were not result of emotion, sympathy, or horror.).

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶¶ 20–22 (Ct. App. 2010) (defendant was charged with killing girlfriend (C.); defendant claimed shooting was accidental; shortly before shooting, C's friend B. received text message from C's cell phone that said, "Can you come over; me and Marcus [defendant] are fighting and I have no gas"; defendant contended prejudicial effect outweighed probative value; court held there was no showing message would have caused jurors to decide case based on emotion, sympathy, or horror, and that message had significant probative value, thus trial court properly admitted text message).

403.cr.100 Once the trial court determines that a photograph has probative value, the trial court, if requested, must determine whether the photograph has any danger of unfair prejudice, and if so, whether the danger of unfair prejudice substantially outweighs the probative value.

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 15–17 (2010) (trial court admitted autopsy photographs of victim who had been dead for 4 days; although photographs showed skin slippage and discoloration, each photograph conveyed highly relevant evidence about crime: cause and manner of victim's death and her body's state of decomposition, and medical examiner used them to explain injuries and assist jurors in understanding his testimony; court held trial court did not abuse discretion in admitting photographs after expressly finding their probative value was not substantially outweighed by any prejudicial effect).

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶ 23 (2010) (defendant was charged with first-degree murder and child abuse as result of death of his girlfriend's daughter; defendant contended trial court erred in admitting autopsy photographs showing various internal injuries; court held photographs were relevant to prove cause of death and extent of abuse and to rebut defendant's argument that victim seemed fine after he beat her and his suggestion she died because of lack of prompt medical care; court noted photographs showed only internal injuries and were unlikely to cause undue prejudice when charges involved beating death of young child, and further stated, "There is nothing sanitary about murder, and there is nothing in Rule 403 that requires a trial judge to make it so").

State v. Lynch, 225 Ariz. 27, 234 P.3d 595, ¶¶ 29–31 (2010) (photographs depicted blood spatter and blood pools in relation to victim's body, and thus corroborated opinion of state's expert that person who slit victim's throat stood behind him; court stated that, although photographs were disturbing, none was overly gruesome, and further noted, "There is nothing sanitary about murder" and nothing "requires a trial judge to make it so").

State v. Lynch, 225 Ariz. 27, 234 P.3d 595, ¶¶ 51–53 (2010) (during aggravation phase, trial court admitted three autopsy photographs depicting close-ups of victim's neck wounds (cut jugular vein; completely severed carotid artery; victim's torso covered in dried blood and head tilted back exposing severed larynx); court held these were properly admitted to illustrate testimony of medical examiner; court noted that, before jurors saw these photographs, they heard expert testimony about neck injuries without objection).

Rule 404(b). Other crimes, wrongs, or acts—Criminal cases.

404.b.cr.010 Rule 404(b) governs only other act evidence that is "**extrinsic**," and thus does not apply to other act evidence that is "**intrinsic**"; other act evidence is **intrinsic** when (1) the other act or acts and the conduct that is the subject of the crime charged are inextricably intertwined, or (2) all acts are part of a single criminal episode, or (3) the other act or acts are necessary preliminaries to the crime charged.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶¶ 5–16 (Ct. App. 2010) (although defendant committed other acts on victim in Yuma and committed charged acts in Tucson, trial court did not abuse discretion in concluding defendant's conduct in Yuma was inextricably intertwined with, and was necessary preliminary to, acts in Tucson because it explained defendant's sexual conduct with victim began by time she was 13 and helped establish time frame within which defendant committed charged acts).

404.b.cr.060 If the conduct in committing the other crime, wrong, or act is so connected with the crime charged that proof of one **incidentally involves** proof of another or **explains the circumstances** of the crime charged, evidence of the other act or acts will **complete the story** and will be **intrinsic** evidence, and thus admissible without a Rule 404(b) analysis.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶¶ 5–16 (Ct. App. 2010) (although defendant committed other acts on victim in Yuma and committed charged acts in Tucson, trial court did not abuse discretion in concluding defendant's conduct in Yuma completed story of crime because it helped establish time frame within which defendant committed charged acts).

404.b.cr.070 Evidence that the defendant has committed similar **sexual acts against the same victim** may indicate that the other acts were part of a system, plan, or scheme and therefore **intrinsic** evidence, thus there will be no need to conduct a Rule 404(b) analysis.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶¶ 5–16 (Ct. App. 2010) (although defendant committed other acts on victim in Yuma and committed charged acts in Tucson, trial court did not abuse discretion in concluding defendant's conduct in Yuma was inextricably intertwined with, and was necessary preliminary to, acts in Tucson because it explained defendant's sexual conduct with victim began by time she was 13 and helped establish time frame within which defendant committed charged acts).

404.b.cr.078 If trial court concludes evidence that the defendant has committed other acts is admissible as **intrinsic** evidence, the trial court is not required to conduct a Rule 403 analysis.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶¶ 21–22 (Ct. App. 2010) (court notes requirement of specific determination under Rule 404(c)(1)(D) does not apply to intrinsic evidence; further, record showed trial court did consider prejudicial effect and probative value; and that defendant never requested that trial court make express findings).

404.b.cr.090 Extrinsic evidence of another crime, wrong, or act is admissible if it is legally or logically relevant, which means it tends to prove or disprove any issue in the case, and thus is admitted for some purpose other than to show the defendant's criminal character.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶¶ 16–17 (Ct. App. 2010) (defendant was charged with committing sexual conduct with minor in year between victim's 14th and 15th birthdays; victim turned 14 shortly after victim and family relocated from Yuma to Tucson; evidence that defendant committed sex acts on victim while they were in Yuma explained defendant's sexual conduct with victim began by time she was 13 and helped establish time frame within which defendant committed charged acts, helped explain that victim's young age may have been factor in her delayed disclosure of abuse, and rebutted defendant's defense that victim reported acts only when she was having difficulties in school or with mother and that they were fabricated).

404.b.cr.230 Extrinsic evidence of another crime, wrong, or act is relevant to show **intent**, but intent is only an issue when the defendant acknowledges doing the act, but denies having the intent the statute requires, thus a blanket denial of criminal conduct does not put intent in issue.

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 17–19 (2010) (defendant was charged with first-degree murder and child abuse as result of death of his girlfriend's daughter; defendant contended trial court erred in admitting following evidence: (1) 3 months prior, he had violently shaken victim; (2) 2 months prior, he had bruised victim's face and buttocks; (3) 1 month prior, he had bruised victim's face; (4) weeks prior, he had bruised victim's arms; court noted child abuse required proof that defendant intentionally or knowingly injured victim, and held evidence was relevant to establish defendant's mental state).

404.b.cr.240 Extrinsic evidence of another crime, wrong, or act is relevant to show **knowledge.**

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 17–19 (2010) (defendant was charged with first-degree murder and child abuse as result of death of his girlfriend's daughter; defendant contended trial court erred in admitting following evidence: (1) 3 months prior, he had violently shaken victim; (2) 2 months prior, he had bruised victim's face and buttocks; (3) 1 month prior, he had bruised victim's face; (4) weeks prior, he had bruised victim's arms; court noted child abuse required proof that defendant intentionally or knowingly injured victim, and held evidence was relevant to establish defendant's mental state).

State v. Hargrave, 225 Ariz. 1, 234 P.3d 569, ¶¶ 20–22 (2010) (defendant contended trial court erred in admitting evidence of guns and ammunition found at defendant's campsite; although defendant and codefendant did not use those guns and that ammunition in charged robbery/murder, because they belonged to codefendant, they were relevant to rebut defendant's defense that he did not know codefendant would be armed during robbery/murder).

404.b.cr.250 Extrinsic evidence of another crime, wrong, or act is relevant to show **motive.**

State v. Hargrave, 225 Ariz. 1, 234 P.3d 569, ¶¶ 11–14 (2010) (because victims were members of minority groups, evidence that defendant and codefendant had formed paramilitary group that asserted supremacy of white race and espoused negative views of racial minorities was relevant to show defendant's motive in killing victims).

404.b.cr.320 Extrinsic evidence of another crime, wrong, or act is relevant **to rebut areas opened** by the other party.

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 17–19 (2010) (defendant was charged with first-degree murder and child abuse as result of death of his girlfriend's daughter; defendant contended trial court erred in admitting following evidence: (1) 3 months prior, he had violently shaken victim; (2) 2 months prior, he had bruised victim's face and buttocks; (3) 1 month prior, he had bruised victim's face; (4) weeks prior, he had bruised victim's arms; court held evidence was relevant to rebut defendant's claim that he did not intend to hurt victim and hit her as "reflex" as well as his contention that girlfriend could have caused injuries).

404.b.cr.460 In death penalty case based on felony murder, extrinsic evidence of another crime, wrong, or act is relevant to show defendant acted with **reckless indifference.**

State v. Garcia, 224 Ariz. 1, 226 P.3d 370, ¶¶ 32–39 (2010) (defendant was convicted of felony murder based on robbery he committed with S. where S. killed victim; evidence that defendant had committed separate robbery with S. 5 weeks earlier where S. had shot victim was admissible to show defendant acted with reckless indifference during subject robbery and killing).

404.b.cr.470 In death penalty case, extrinsic evidence of another crime, wrong, or act is relevant to show an **aggravating circumstance.**

State v. Garcia, 224 Ariz. 1, 226 P.3d 370, ¶¶ 32–39 (2010) (evidence that defendant was convicted of committing robbery that happened 5 weeks before present robbery/felony murder was admissible to show (F)(2) prior conviction aggravating circumstance).

Rule 404(c) Character evidence in sexual misconduct cases.

404.c.cr.020 Evidence that the defendant committed the other acts against the same victim is admissible to show the defendant's lewd disposition or unnatural attitude toward the particular victim, but the trial court must still go through the analysis stated in Rule 404(c)(1)(A)–(C).

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶¶ 18–19 (Ct. App. 2010) (evidence defendant committed other acts on victim in Yuma when she was 13 admissible in prosecution for acts defendant committed on victim in Tucson between her 14th and 15th birthdays).

Rule 404(c)(1)(A) — Character evidence in sexual misconduct cases—Sufficiency of evidence.

404.c.1.A.cr.010 Before admitting evidence of another act in a sexual misconduct case, the trial court must find that the evidence is sufficient to permit the trier-of-fact to find by clear and convincing evidence that the defendant committed the other act.

State v. Herrera, 226 Ariz. 59, 243 P.3d 1041, ¶ 20 (Ct. App. 2010) (victim's testimony (1) identifying herself in videotape clips depicting her breasts, (2) identifying defendant's voice in videotape, and (3) that defendant took that videotape and others was sufficient to establish by clear and convincing evidence that acts had occurred and defendant did them).

Rule 407. Subsequent Remedial Measures.

407.020 The purpose of Rule 407 is to encourage remedial measures by freeing a party from concern that evidence of taking of such measures might be used against the party as an admission by conduct.

Johnson v. State Dept. of Transp., 224 Ariz. 554, 233 P.3d 1133, ¶ 9 (2010) (truck turned onto highway, and after truck traveled approximately 713 feet, it was struck from behind by decedent's vehicle; after collision, ADOT installed truck-crossing sign and variable message board to warn drivers that trucks would be entering highway; before trial, there was factual dispute whether ADOT knew of decedent's death when it decided to place warning signs near intersection; court held that requiring prior knowledge of collision would upset underlying policy that rule was designed to implement because potential defendant would be reluctant to make safety changes for fear that it could be sued over accidents about which it had no knowledge and would not be afforded protection of rule).

407.030 Rule 407 applies whenever measures are taken after an event; there is no requirement that the party must have known about the event prior to taking the remedial measures.

Johnson v. State Dept. of Transp., 224 Ariz. 554, 233 P.3d 1133, ¶¶ 9–16 (2010) (truck turned onto highway, and after truck traveled approximately 713 feet, it was struck from behind by decedent's vehicle; after collision, ADOT installed truck-crossing sign and variable message board to warn drivers that trucks would be entering highway; before trial, there was factual dispute whether ADOT knew of decedent's death when it decided to place warning signs near intersection; court held that knowledge of collision was not prerequisite for application of Rule 407, thus whether or not ADOT knew of collision was not relevant).

407.040 Although the trial court may not admit evidence of a subsequent remedial measure to prove negligence or culpable conduct, it may do so for some relevant purpose, such as showing ownership, control, or feasibility of precautionary measures, or for impeachment.

Johnson v. State Dept. of Transp., 224 Ariz. 554, 233 P.3d 1133, ¶¶ 17–22 (2010) (truck turned onto highway, and after truck traveled approximately 713 feet, it was struck from behind by decedent's vehicle; after collision, ADOT installed truck-crossing sign and variable message board to warn drivers that trucks would be entering highway; plaintiff contended evidence of sign and message board should have been admitted for other purpose, i.e., to rebut state's assertions that decedent was comparatively at fault; court held this was just another way to show defendant's negligence, thus rule precluded this evidence).

407.045 Although the trial court may not admit evidence of a subsequent remedial measure to prove negligence or culpable conduct, it may do so for some relevant purpose, such as to impeach other party if that party claims the condition was the safest possible.

Johnson v. State Dept. of Transp., 224 Ariz. 554, 233 P.3d 1133, ¶¶ 23–25 (2010) (truck turned onto highway, and after truck traveled approximately 713 feet, it was struck from behind by decedent's vehicle; after collision, ADOT installed truck-crossing sign and variable message board to warn drivers that trucks would be entering highway; defendant made no contention intersection was safest possibility, thus rule precluded this evidence).

ARTICLE 6. WITNESSES

Rule 609(a). Impeachment by Evidence of Conviction of Crime — General rule.

609.a.025 A witness may be impeached with a prior conviction punishable by death or imprisonment in excess of 1 year.

State v. Hatch, 225 Ariz. 409, 239 P.3d 432, ¶¶ 6–14 (Ct. App. 2010) (although Proposition 200 provided that person with first or second conviction of drug offense had to be placed on probation and thus could not be imprisoned in excess of 1 year, Proposition 302 provided that trial court could sentence person to prison if they failed to comply with certain conditions of probation, thus trial court properly allowed defendant to be impeached with conviction for possession of drug paraphernalia).

Rule 611(a). Mode and Order of Interrogation and Presentation — Control by the court.

611.a.020 A trial court has discretion to determine the manner of the proceedings, the manner of questioning, and the order of presentation of evidence.

Gamboa v. Metzler, 223 Ariz. 399, 224 P.3d 215, ¶¶ 12–18 (Ct. App. 2010) (because of scheduling problems, parties agreed witness E would testify from 1:00 p.m. to 1:30 p.m., and then parties would have from 1:30 p.m. to 4:30 p.m. for witness A; Plaintiff however did not finish with witness E until 2:41 p.m.; Defendant examined witness A from 3:04 p.m. to 4:00 p.m., and Plaintiff began cross-examination at 4:12 p.m., with a recess from 4:29 p.m. to 4:38 p.m., and continued until 5:04 p.m. when trial court stopped proceedings; Plaintiff objected to trial court's "limiting [his] cross-examination," but did not request to resume cross-examination next day; next morning, trial court considered Plaintiff's objection, and found Plaintiff's attorney was responsible for scheduling problems; trial court did allow Plaintiff's attorney to attempt to contact witness A, but Plaintiff's attorney could not reach witness A; trial court concluded it would not keep jurors waiting any longer and allowed them to begin their deliberations; Plaintiff contended trial court violated his due process rights by not allowing sufficient time to cross-examine witness A; court concluded time limits imposed were not unreasonable, noted Plaintiff had approximately 43 minutes to cross-examine witness A, and further noted Plaintiff did not make offer of proof of what he would have been able to accomplish with more cross-examination, and thus held Plaintiff failed to show how he was harmed by trial court's time limitations).

ARTICLE 7. OPINION AND EXPERT TESTIMONY

Rule 702. Testimony by Experts.

702.010 Expert testimony based on the witness's own experience, observation, and study, and the witness's own research and that of others, is admissible if (1) the witness is qualified as an expert, and (2) the testimony will aid the jurors to understand the evidence or to determine a fact in issue; for such evidence, there is no requirement that the trial court undergo a reliability analysis.

Lear v. Fields, ___ Ariz. ___, 245 P.3d 911, ¶¶ 14–22 (Ct. App. 2011) (A.R.S. § 12–2203 does not alter any substantive law, but instead is attempt to control admissibility of expert witness testimony in all cases and such controls procedural matters; because it conflicts with existing rules of evidence, it is unconstitutional).

702.020 Expert testimony based on a novel scientific principle, formula, technique, or procedure developed or advanced by others is admissible if (1) the witness is qualified as an expert, (2) the testimony will aid the jurors to understand the evidence or to determine a fact in issue, and (3) the scientific principle, formula, technique, or procedure has gained general acceptance in the particular scientific field in which it belongs.

Lear v. Fields, ___ Ariz. ___, 245 P.3d 911, ¶¶ 14–22 (Ct. App. 2011) (A.R.S. § 12–2203 does not alter any substantive law, but instead is attempt to control admissibility of expert witness testimony in all cases and such controls procedural matters; because it conflicts with existing rules of evidence, it is unconstitutional).

702.070 The witness's specialty affects the weight of the testimony and not its admissibility, thus the witness does not necessarily need to have the same specialty as the area that is the subject of the litigation.

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 24–27 (2010) (medical examiner testified during aggravation stage that victim had suffered "excruciating" pain when defendant beat her; defendant contended medical examiner was not qualified to testify on subject of pain levels because he was certified only in pathology and had not ascertained a patient's pain level for 10 years; court held these matters went to weight and not admissibility of testimony).

Rule 703. Bases of Opinion Testimony by Experts.

703.090 An expert witness may disclose the facts or data only for limited purpose of disclosing the basis of the opinion and not as substantive evidence.

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 18–20 (2010) (victim was killed in 1996, but police did not identify defendant as suspect until 2003; defendant contended medical examiner's testimony in 2007 violated his right of confrontation because she had not performed victim's autopsy in 1996 nor authored autopsy report; medical examiner testified she formed her own opinion and that 1996 autopsy report was only part of basis for her opinion; court held medical examiner's testimony was not hearsay and did not violate defendant's right of confrontation).

703.095 If an expert witness discloses the facts or data only for the limited purpose of disclosing the basis of the opinion, they are not substantive evidence and admission of those facts and data does not violate the right of confrontation.

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163, ¶¶ 22–24 (2010) (senior forensic analyst who was laboratory supervisor testified about laboratory's operating procedures, standards, and safeguards, and although she did not witness all steps in process, she checked technicians' records for any deviations from laboratory's protocols, and then personally performed final step in process, interpretation and comparison, which was only step that required human analysis; court held senior analyst's testimony did not violate Confrontation Clause).

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 18–20 (2010) (victim was killed in 1996, but police did not identify defendant as suspect until 2003; defendant contended medical examiner's testimony in 2007 violated his right of confrontation because she had not performed victim's autopsy in 1996 nor authored autopsy report; medical examiner testified she formed her own opinion and that 1996 autopsy report was only part of basis for her opinion; court held medical examiner's testimony was not hearsay and did not violate defendant's right of confrontation).

703.110 Although an expert witness is allowed to disclose facts or data not admissible in evidence if they are of the type upon which experts reasonably rely, the expert should not be allowed to act merely as a conduit for the other expert's opinion and thus circumvent the requirements excluding certain types of hearsay statements.

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163, ¶¶ 22–23 (2010) (senior forensic analyst who was laboratory supervisor testified in detail about laboratory's operating procedures, standards, and safeguards, and although she did not witness all steps in process, she checked technicians' records for any deviations from laboratory's protocols, and then personally performed final step in process, interpretation and comparison, which was only step that required human analysis; court held senior analyst formed her own opinion and did not act merely as conduit for opinions of others).

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 18–20 (2010) (victim was killed in 1996, but police did not identify defendant as suspect until 2003; defendant contended medical examiner's testimony in 2007 violated his right of confrontation because she had not performed victim's autopsy in 1996 nor authored autopsy report; medical examiner testified she formed her own opinion and that 1996 autopsy report was only part of basis for her opinion; court held medical examiner's testimony was not hearsay and did not violate defendant's right of confrontation).

In re Thomas R., 224 Ariz. 579, 233 P.3d 1158, ¶¶ 39–41 (Ct. App. 2010) (in SVP proceeding, expert based opinion on numerous factors, one of which was other expert's DNA report; because other expert's conclusion in DNA report was only one of several factors upon which testifying expert relied, testifying expert did not act merely as conduit for other expert's opinion).

Rule 704. Opinion on Ultimate Issue.

704.010 Opinion evidence is admissible even if it involves an ultimate issue in the case.

State v. Chappell, 225 Ariz. 229, 236 P.3d 1176, ¶¶ 16–18 (2010) (state alleged killing was especially cruel; medical examiner testified that drowning was "horrifying experience" and "10" on "scale of 1 to 10"; defendant contended this was improper opinion on ultimate issue; court noted testimony was about experience of drowning and not opinion whether victim suffered, thus comments were neither improper nor embracing ultimate issue).

ARTICLE 8. HEARSAY

Rule 801. Hearsay Definitions.

801.010 Admission of an out-of-court statement that is non-hearsay is not "testimonial evidence" and does not violate the confrontation clause of the United States Constitution.

State v. Womble, 225 Ariz. 91, 235 P.3d 244, ¶¶ 10–13 (2010) (detective testified that jail informant told him about defendant and that he used that information to get court order to listen to telephone calls; because detective testified only about defendant's existence and not about substance of what informant said, testimony did not violate Confrontation Clause).

801.070 If the out-of-court statement is not the functional equivalent of in-court testimony or was not made under circumstances that the declarant would reasonably expect to be available at trial against a particular defendant, it will not be considered a "testimonial statement" or "testimonial evidence" and thus its admissibility will be controlled by the rules governing hearsay statements.

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶¶ 7–13 (Ct. App. 2010) (throughout morning, defendant and girlfriend (C.) argued because C. did not want defendant to go to MLK Day event because she worried defendant's ex-girlfriend might be there and because she feared violence might break out at event; at 11:21 a.m., C's friend B. received text message from C's cell phone that said, "Can you come over; me and Marcus [defendant] are fighting and I have no gas"; shortly after that, defendant's roommate heard gunshot; defendant told roommate C. had been shot; at trial, defendant claimed shooting was accidental; at trial, trial court admitted text message; on appeal, defendant contended admission of text message violated his Sixth Amendment right of confrontation; because defendant did not object at trial, court reviewed for fundamental error only; because nothing indicated C. intended text message might later be used in prosecution or at trial, court concluded text message was not testimonial, thus no Sixth Amendment violation).

801.100 The Confrontation Clause does not require that every person in the chain of custody be available to cross-examination, thus not everyone whose testimony might be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device must appear in person.

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163, ¶¶ 1–21 (2010) (DNA testing and analysis involved seven steps; during first six steps, technicians used machines to isolate and amplify DNA and generate profiles, but did not interpret data or draw conclusions, and those technicians did not testify; senior forensic analyst who was laboratory supervisor testified in detail about laboratory's operating procedures, standards, and safeguards, and although she did not witness all steps, she checked technicians' records for any deviations from laboratory's protocols, and then personally performed final step in process, interpretation and comparison, which was only step that required human analysis; that analyst then testified that several profiles derived from evidence at crime scene matched profile obtained from defendant's blood sample; court noted it was useful to separate testimony into two parts: (1) testimony about laboratory protocols and generation of DNA profiles and (2) expert opinion that profiles matched; court assumed without deciding (1) machine-generated DNA profiles were hearsay statements and (2) although profiles were not admitted in evidence, senior analyst's testimony was functional equivalent of introduction of profiles in evidence; court held that chain of custody testimony did not violate Confrontation Clause simply because every technician who handled and processed samples did not testify, and that because defendant had opportunity to cross-examine senior analyst and question her about laboratory's procedures, technicians work, and machine-generated data, admission of senior analyst's testimony did not violate Confrontation Clause).

Rule 801(a). Hearsay Definitions — Statement.

801.a.010 If verbal or nonverbal conduct is not intended to be an assertion, by definition it is not hearsay, even if it is offered as evidence of the declarant's implicit belief of a fact.

State v. Chavez, 225 Ariz. 442, 239 P.3d 761, ¶¶ 6–10 (Ct. App. 2010) (in inventory search of defendant's vehicle, officers found drugs and two cell phones; on cell phones were text messages in which unidentified senders apparently sought to buy drugs from defendant; defendant contended these messages were hearsay; court held these messages were not offered to prove truth of matters asserted (that senders wanted to purchase drugs), and they were not assertions that defendant had drugs for sale; rather they were offered as circumstantial evidence that defendant had drugs for sale, and fact that they showed declarants thought defendant had drugs for sale did not make them assertions).

Rule 801(c). Hearsay Definitions — Hearsay.

801.c.010 Hearsay is an oral, written, or non-verbal assertion, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶¶ 14–15 (Ct. App. 2010) (trial court admitted text message from victim's cell phone that said, "Can you come over; me and Marcus [defendant] are fighting and I have no gas"; because this was out-of-court statement offered to prove truth of matter asserted (that victim and defendant were fighting shortly before defendant shot victim), statement was hearsay).

Rule (d)(2)(A) —Statements that are not hearsay: Party-opponent's own admission.

801.d.2.A.060 Before the state may introduce, as additional evidence of a crime, the defendant's extra-judicial confession or admission made after the crime, the state must establish, independent of the defendant's statement, a reasonable inference of the *corpus delicti* of the crime, the elements of which are (1) that a certain result has been produced, and (2) that the result was caused by criminal agency rather than by accident or some other non-criminal action.

State v. Chappell, 225 Ariz. 229, 236 P.3d 1176, ¶¶ 8–10 (2010) (2-year-old victim died by drowning in swimming pool; on appeal, defendant contended his statements about murder should have been excluded because state failed to proved *corpus delicti*; because defendant did not object to admission of his statements at trial, court reviewed for fundamental error only; court held following evidence corroborated defendant's statements: Several days before victim's death, defendant was seen inspecting swimming pool area at apartment complex where victim and his mother lived; rock similar to rocks found near defendant's parents' house was used to prop open pool gate; mother routinely locked apartment door at night, making it unlikely victim could have opened door himself; at one time, defendant had key to mother's apartment; and victim's body was found in pre-dawn hours in pool located some distance from mother's apartment; court held this corroborating evidence made it very unlikely victim's death was accident; court found no error, fundamental or otherwise).

Rule 803(1). Hearsay Exceptions; Availability of Declarant Immaterial — Present sense impressions.

803.1.010 A hearsay statement is admissible as a present sense impression if (1) the declarant perceived the event or condition, (2) the statement described the event or condition, and (3) the declarant made the statement while perceiving the event or condition or immediately thereafter.

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶¶ 16–17 (Ct. App. 2010) (trial court admitted text message from victim's cell phone that said, "Can you come over; me and Marcus [defendant] are fighting and I have no gas"; court concluded (1) declarant perceived event, (2) statement described event, and (3) use of present tense (we "are fighting") suggested declarant sent message during fight or shortly after it, thus statement qualified as present-sense impression).

Rule 803(5). Hearsay Exceptions; Availability of Declarant Immaterial — Recorded recollection.

803.5.005 In order to be admissible under this exception, the requirements are: (1) the declarant (a) once had knowledge of the event, (b) now has insufficient recollection to testify fully and accurately, and (c) made or adopted the statement when the matter was fresh in the declarant's memory; and (2) the statement correctly reflects the declarant's knowledge.

State v. Martin, 225 Ariz. 162, 235 P.3d 1045, ¶ 12 (Ct. App. 2010) (after alleged molestations, forensic specialist conducted videotaped forensic interview of 5-year-old victim; victim testified at trial, and could remember details of one incident; for other incident, victim testified she could not remember it, but she remembered talking to "a lady" to whom she told "the truth" at time when she could better remember "some other stuff that happened with [Defendant]," and detective testified videotape accurately reflected forensic interview he observed; court held this met foundational requirements of rule).

803.5.007 When a witness testifies and is subject to cross-examination, any statement that witness made is admissible and its admission does not violate the confrontation clause.

State v. Martin, 225 Ariz. 162, 235 P.3d 1045, ¶¶ 16–20 (Ct. App. 2010) (after alleged molestations, forensic specialist conducted videotaped forensic interview of 5-year-old victim; victim testified at trial, and could not remember details of one incident, so trial court had videotape played to jurors; defendant contended interviewer's statements in videotape were testimonial, and because interviewer did not testify, that violated his right to confront witnesses; court noted interviewer only asked questions and at times requested clarification, but did not repeat statements made by others or recount any other information that might have implicated defendant, thus what interviewer said was not testimonial hearsay; court held no violation of right of confrontation).

803.5.017 If a memorandum or record is admissible under this rule, the memorandum or record may be read in evidence, but the memorandum or record may not itself be received as an exhibit unless the adverse party offers it.

State v. Martin, 225 Ariz. 162, 235 P.3d 1045, ¶¶ 13–15 (Ct. App. 2010) (trial court ruled videotape of forensic interview of 5-year-old victim was recorded recollection and played it to jurors during trial over defendant's objection; in response to question from jurors, trial court and parties agreed jurors would be able to review videotape during deliberations; on appeal, defendant contended trial court erred in allowing videotape to be admitted in evidence and making it available to jurors during deliberations; because defendant did not object at trial, court reviewed for fundamental error only; court held defendant failed to prove jurors reviewed videotape during deliberations, and further held that, even if jurors did view videotape during deliberations, other evidence supported his conviction, thus defendant failed to establish prejudice).

803.5.040 This rule is not limited to written materials, thus a videotape may qualify as a recorded recollection.

State v. Martin, 225 Ariz. 162, 235 P.3d 1045, ¶¶ 10–11 (Ct. App. 2010) (after alleged molestations, forensic specialist conducted videotaped forensic interview of 5-year-old victim; victim testified at trial, and could remember details of one incident but not of other incident; trial court played for jurors videotaped interview where victim described other incident; court rejected defendant's contention that Rule 803(5) is limited to written material).

Rule 804(b)(3). Hearsay Exceptions; Declarant Unavailability —Statements against interest.

804.b.3.005 For a statement to be admissible under this exception: (1) the declarant must be unavailable; (2) the statement must be against the declarant's interest; and (3) there must be corroborating evidence that indicates the statement's trustworthiness.

State v. Machado, ___ Ariz. ___, ___ P.3d ___, ¶¶ 19–22 (Feb. 16, 2011) ((1) because telephone call was from anonymous caller, caller was unavailable; (2) although call from anonymous caller usually would not be against caller's penal interest (because caller was seeking to protect against consequences of call), in this case, police used call to get warrant for suspect's voice sample, thus call was against penal interest; (3) other evidence corroborated statements in call about vehicles and when they arrived at house; evidence of telephone call was thus admissible).

ARTICLE 9. AUTHENTICATION AND IDENTIFICATION

Rule 901(a). Requirement of Authentication or Identification — General provision.

901.a.010 For the matter in question to be admissible in evidence, the proponent need only present sufficient evidence from which the trier-of-fact could conclude that the matter in question is what the proponent claims it to be; whether the matter in question is in fact what the proponent claims and whether it is connected to the litigation is a question of weight and not admissibility, and is for the trier-of-fact.

State v. Miller (Estrella), ___ Ariz. ___, 245 P.3d 887, ¶¶ 7–11 (Ct. App. 2010) (state's witness had monitored and transcribed numerous wiretap recordings of conversations between defendant and persons connected with defendant, many of which were in Spanish; court held that witness could authenticate law enforcement interview tapes and tapes of jailhouse telephone calls by identifying voices on tapes based on her experience with the monitoring and transcribing).

901.a.020 The trial court does not determine whether the matter in question is what the proponent claims it to be; the extent of the trial court's duty is to determine whether the proponent has presented sufficient evidence from which the trier-of-fact could find that the matter in question is what the proponent claims it to be; whether the matter in question is in fact what the proponent claims and whether it is connected to the litigation are questions of weight and not admissibility, and are for the trier-of-fact.

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶¶ 18–19 (Ct. App. 2010) (defendant was charged with killing girlfriend (C.); defendant claimed shooting was accidental; shortly before shooting, C's friend B. received text message from C's cell phone that said, "Can you come over; me and Marcus [defendant] are fighting and I have no gas"; defendant contended text message could not be authenticated because state did not prove C. sent message; court held following was sufficient for jurors to determine C. sent message: At trial, B. testified she and C. often communicated with text messages, that she had C's cell-phone number on her cell-phone with nickname for C., and when message arrived, it displayed that nickname as sender of message; C's cell-phone was found on bed next to C's body, and there was no evidence anyone other than C. used that cell-phone that morning).

901.a.030 Objection of "no foundation" is insufficient to preserve the issue; the objecting party must indicate how the foundation is lacking so the party offering the evidence can overcome the shortcoming, if possible.

State v. Rodriguez, 186 Ariz. 240, 250, 921 P.2d 643, 653 (1996) (defendant objected to improper foundation for admission of earring; because defendant did not identify what foundation was lacking, trial court did not abuse discretion in admitting exhibit).

State v. Guerrero, 173 Ariz. 169, 171, 840 P.2d 1034, 1036 (Ct. App. 1992) (defendant contended on appeal state failed to provide specifics about times, dates, places, or quantities of prior acts; court held that claim of insufficient foundation may not be raised on appeal unless appellant specifically points out to trial court alleged defects in foundation so that opponent may cure any defects).

Packard v. Reidhead, 22 Ariz. App. 420, 423, 528 P.2d 171, 174 (1974) (court noted that appellee laid tenuous foundation for admission of traffic signal installation report, but held appellant's "no foundation" objection was inadequate to preserve issue for review on appeal; purpose of rule is to enable adversary to obviate objection if possible and to permit trial court to make intelligent ruling).

Rule 901(b)(5). Requirement of Authentication or Identification — Illustrations — Voice identification.

901.b.5.010 A witness may identify a voice from a tape recording.

State v. Miller (Estrella), ___ Ariz. ___, 245 P.3d 887, ¶¶ 7–11 (Ct. App. 2010) (state's witness had monitored and transcribed numerous wiretap recordings of conversations between defendant and persons connected with defendant, many of which were in Spanish; court held that witness could authenticate law enforcement interview tapes and tapes of jailhouse telephone calls by identifying voices on tapes based on her experience with the monitoring and transcribing).